The Invisible Correlation Between the Harmonization, Coordination and Taxation Policies of the European Union

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doi.org/10.51505/IJEBMR.2026.10918 URL: https://doi.org/10.51505/IJEBMR.2026.10918

Received: Aug 31, 2026 Accepted: Sep 08, 2026 Online Published: Sep 18, 2026

Abstract
The European Union must act – according to the principle of conferral – only in the policy areas, that the Contracting Parties anchored in the Treaties. Principle of conferral, laid down in Article 5 of the Treaty on European Union, constitutes one of fundamental principles of the EU law. In the light of this principle, the EU acts only within the limits of the competences that States have conferred upon this organization in the treaties. These competences are defined in Articles 2–6 of the Treaty on the Functioning of the European Union. In general, it means, that competences not conferred on the EU by the treaties remain by the national States.

However, the European Court of Justice interprets the EU law and – sometimes – it extends the competencies transferred. It all happens for the sake of free movement of goods, internal market. This extensive interpretation never happens in the policy areas of social policy, European Social Charter (1961) and the Community Charter of the Fundamental Social Rights of Workers (1989). This may astonish, since the free movement of workers constitutes one of fundamental principles of the European Union.

Can one understand and interpret the rights of workers without their social rights? This is the question the present paper is going to examine.

Further question is the activism of the European Court of Justice in the area of tax policy.

Keywords: harmonization policy, coordination of social systems of the European Union, taxation policy of the EU, principle of conferral, cabotage

1. Introduction

1.1 Introduce the Problem

The present research deals with competencies of the European Union in different policy areas and shows a friction between the rights of workers and their social security. Since they may work (free movement of people) and provide their workforce, they do not deserve the same status in social rights and respected protection. Their possibilities end, once they get sick and require

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ISSN: 2456-7760

medical assistance. From that point on, the European Union law fails to secure their social and financial stability. They thus are the players as long as their are providing their workforce. Once they are sick and unable to work, they are not needed anymore – by the established system. Workers typically go to work to richer EU countries, so they export their workforce to richer EU countries. These countries earn the workforce and safe the expanses for social security, since the social rights are not compatible with the free movement of people.

Further contradiction is proven in the area of taxation policy. This field belongs to the competencies of Member States. However, once the EU companies move across the border and provide the services in a different country (free movement of services), typically richer country, the European Court of Justice has secured that the taxes are to be paid in the country, in which the service is supplied. It thus applied extensive interpretation of competencies to secure a flow of capital to the richer country, in which the service is provided. The friction is here, that usually companies from poorer EU countries go across the border driving hundreds of kilometers in order to provide their service in a richer country. Although their prices – for service – are compatible with the price level in the poorer country, their taxes go to the richer country, whose citizens prefer to pay lower prices, for cheaper workforce.

2. Method

The current paper compares different policy areas, as laid down in the Treaties on the European Union. It discusses regulations and the level of harmonization or coordination. It lists contradictions in respected four policy areas. The comparative law study refers also to economic aspects.

A. Policy areas as foreseen in the Treaties

The European Union integration started with the Treaty establishing the European Economic Community (TEEC), signed in Rome on 25 March 1957. The Treaty of Maastricht (7 February 1992) marked a further step on the way to the political unification of Europe. This Treaty establishing the European Community (TEC or EC Treaty), as put in place by the Treaty of Maastricht constituted a base for the Treaty on the Functioning of the European Union (TFEU), the Lisbon Treaty.

I. The fundamental freedom: free movement of workers
All the treaties foresaw fundamental freedoms, such as free movement of workers, goods, services and capital across the borders. The free movement of workers is anchored in the Treaties since the inception of the European Union.

Article 3(2) of the Treaty on European Union (TEU) and Articles 4(2)(a), 20, 26 and 45-48 of the Treaty on the Functioning of the European Union (TFEU) constitute the legal basis for the free movement of workers.

According to Article 45 (ex Article 39 TEC) of the TFEU [1] freedom of movement for workers shall be secured within the Union (para 1). Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment (para 2).

Para 3 states, that this freedom shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: to accept offers of employment actually made (a); to move freely within the territory of Member States for this purpose (b); to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action (c); and to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission (d).

The fundamental right of free movement of workers has been developed in many regulations and directives since the 1960s. The founding regulation on freedom of movement of workers (Regulation (EEC) No 1612/68) and the complementing directive on the abolition of restrictions on movement and residence (Council Directive 68/360/EEC) have been modernized several times.

Currently, the key EU provisions are Directive 2004/38/EC on the rights of movement and residence, Regulation (EU) No 492/2011 on free movement for workers, Directive 2014/54/EU on measures facilitating the exercise of workers' rights to free movement and Regulation (EU) 2019/1149 establishing a European Labor Authority.

As an achievement, the EU describes the number of cross-border workers in the EU of approximately 1.87 million in 2024.

II. Social security of workers

According to Article 151 TFEU [2] the Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, proper social protection, dialogue between management and labor, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favor the harmonization of social systems, but also from the procedures

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provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.

The EU law foresees here solely a coordination of Member States laws, due to the respect of independence of national social systems. This coordination must serve the reduction of obstacles to the freedom of movement of workers.

Neither the Commission nor the ECJ has drafted a definition of the coordination of Member States – until today. Scholars trying to define this term of policy refer its goals on the one hand and try to determine it, based on its differences to the harmonization, on the other hand.

The mission of coordination contains Article 48 (ex Article 42 TEC) [3], according to which, the EU legislature, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self-employed migrant workers and their dependants: aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries (a), payment of benefits to persons resident in the territories of Member States (b).

Where a member of the Council declares that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, the European Council shall, within four months of this suspension, either refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure (a); or take no action or request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted (b).

The context, in which Article 48 is anchored in the Treaty, just after Article 45, means that it contains an order to secure the fundamental freedom for the fulfillment of conditions of the freedom of workers. The coordination is limited to ensuring the interoperability of national social security systems by removing obstacles to freedom of movement.

The European Commission underlines the lower level of intervention in relation to the autonomy of Member State's systems, compared to harmonization, as it highlights this as an essential characteristic of coordination [4].

In this regard the Regulation (EC) No 883/2004 [5] coordinates the systems of Member States.
The social law provides for selective changes of national social laws, for example by export of social security services [6].

One must raise the question, why social security foresees solely selective harmonization, while the workforce (fundamental freedom of free movement of workers) is applicable unlimited and is subject to harmonization. It is established this way, so that the budgets of the countries, who need cheap workforce (typically from Eastern Europe) will not be burdened by social expenses (expenses for those, who cannot work).

In every country of the EU social security corresponds with equal treatment of workers. Thus, it constitutes common constitutional tradition for all Member States.

The EU law, as it foresees a deviation between social security (selective harmonization) and freedom of workforce (harmonization) does not fulfill these common constitutional traditions for all Member States.

III. Taxation policy

The matter of taxes has two main issues: customs and regular taxes.

The fundamental freedom of free movement of goods contains the customs union, since 1968. According to Article 28 of the Treaty on the Functioning of the European Union (TFEU) borders are abolished between member countries in relation to the trade of all goods. Between member countries customs duties, or charges having a similar effect, are forbidden.

The rule of law is different, when it is about taxes. The EU has no powers to levy or collect taxes — these powers rest in the competency of Member States. The Treaty on the Functioning of the EU [7] contains Articles 110 to 113, according to which adopting harmonized legislation on taxation requires the unanimous agreement of all Member States in the Council.

Thus, the main focus of EU tax policy is the smooth operation of its single market, i.e. ensuring that cross-border economic activity is not impeded by tax barriers and that distortions of competition are avoided. It seeks to ensure that citizens and businesses do not experience difficulties in regard to double taxation, distortion of competition, claiming tax refunds and obtaining information on tax rules in relation to other Member States.

B. The European Court of Justice of a „motor of integration“ in respected policy areas

Harmonization of Member State’s legal orders serves providing the cheap workforce to rich Member States, like Germany. And coordination of Member State’s legal orders serves occurs, when the given individual (worker) cannot provide his workforce anymore.

Summing up, the harmonization policy is applicable, once citizens of other Member States would like to go access the border and find work in a different EU country.

And the EU coordinates the policies of Member States, when the given worker cannot provide his workforce anymore, due to – for instance – illness. In this case, social laws are applicable,

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which foresee solely a coordination of laws. It means that the same standards do not have to be given and secured in all Member States equally.

Typical situation is, that a worker goes abroad to find a job in a richer Member States, while his family stays back home. Once, he cannot work anymore, due to an accident or illness, he goes back to his country of origin, where he does not obtain the same medical services, that he could obtain in the rich country, where he was working (for years).
The EU law do not demand that social rights will be respected in all Member States at the same level.

I. Fundamental freedom: the free movement of people – harmonization *vs*. coordination while it is about social rights – the friction

The principle of free movement of workers, as anchored in the Treaties, is supported in many EU regulations [8] and directives [9] – secondary law sources.

The friction is here that the laws of Member States are harmonized, when it is about free movement of workers, providing their workforce and – once they do not provide it – the laws are only coordinated. The problem is here, that typically workers go abroad to rich countries, while they live in poorer states, due to cheaper living costs.

In this regard the Regulation (EC) No 883/2004 [10] coordinates the systems of Member States.
According to Article 7 of this regulation „Waiving of residence rules“ cash benefits payable under the legislation of one or more Member States or under this Regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his family reside in a Member State other than that in which the institution responsible for providing benefits is situated.

This provision constitutes a prohibition of discrimination.

However, the export of benefits (from richer to poorer Member State, where the unemployed worker is living) because of unemployment is limited. In this respect Article 63 contains „special provisions for the waiving of residence rules“ stating, that for the purposes of this Chapter, Article 7 shall apply only in the cases provided for by Articles 64 and 65 and within the limits prescribed therein.

The prohibition of discrimination is excluded in the section special non-contributory cash benefits, under Article 70 „General provision“ in case of special non-contributory cash benefits. Such benefits shall be provided by and at the expense of the institution of the place of residence.
The unemployed thus must have the same access to benefits of the state, he is living in, on a non-discriminatory basis.

The coordinated social laws are not aligned with the harmonized laws regarding the employment, what constitutes a friction and a distortion. This is due to the fact, that workers decide to work in

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richer Member States in order not only to earn more, but also to „earn" better social status and security. The regulations, are they are now, do not match the needs of the workers and they thus constitute an unequal treatment, since employees, who worker in the richer country and stood there after the employment, possess the better rights. Their integration in the system of the richer country (they are living in) rests longer than the integration of the workers who go abroad to provide their workforce in a different state and thus live the fundamental freedoms, as anchored in the Treaties.

Due to this friction, workers going abroad „earn" social security rights. They however loose them, once they get sick, invalid or unemployed. They thus loose the status, they have „earned" working for, sometimes for years.

This legal situation serves the protection of richer countries, that workers typically go to work for, for example Germany. The richer countries have „earned" the workforce and could safe the costs, once the employee got sick or unemployed, for social security. Rich countries thus earn double on workers who go abroad (winning the workforce and saving the social security costs).
At the same time, the EU provisions do not provide any compensation or balance payments between the Member States. One could foresee that the richer country transfers the costs to the budget of the poorer state in order to share the „earnings" from the workforce of a citizen of the poorer country. However, this does not occur.

For the budget of poorer Member States this legal situation constitutes a challenge. They lose the employee, who is providing his workforce abroad and they must pay him, once he is invalid or sick.

This legal situation cannot be satisfying for the worker as well. In order to integrate in the system of richer state, he had expenses, like transport costs. He might have needed more time to arrive to his workplace (since he lives in the poorer state). Last but not least they had to overcome language and distance barriers. And at the end of the day, once he became unemployed, the richer state does not provide him any security.

This constitutes a discrimination, since the worker in fact took active part in earning the gross domestic product of the richer state and – most importantly – it lived the fundamental freedoms – the one for workers who provide their workforce abroad.

The winners of this legal situations are rich countries, like Germany. The regulations, as they are since the beginnings of the EU, clearly serve the protection of budgets of richer countries and their economies. They exploit the given person, as long it is possible and once invalidity or unemployment occurs, they are not responsible for proper protection – due to valid EU law – and against common constitutional traditions of Member States. The policy of coordination thus serves the protection of (social) budgets of rich Member States, like Germany, who like to exploit the workforce coming from poor Member States.

II. Taxation policy – what is it?

Taxation policy, as mentioned above, must secure smooth operation of its single market, i.e. ensuring that cross-border economic activity is not impeded by tax barriers and that distortions of competition are avoided. From this point on the author starts a discussion on the matter, if the EU regulations fulfill this objective.
Especially, the author devotes its attention to the further matter of comparison with existing rules and what the ECJ – as a motor of integration – did with it.

According to the above mentioned regulations, EU does not collect taxes. However, it issues rules in this regard.

The requirements of unanimous adoption of rules has tended to act as a brake on the adoption of common rules.

The system of the European Union probably foresaw situations this kind and secured a „unanimous interpretation“ of EU law with the establishment of the European Court of Justice … or is it rather the European Court of Diplomacy [11].

The author suggests a review based on the interpretation of the term „place of providing service“.

The term of place, where the service is provided could be determined in several ways.

Against the wording (common interpretation methods do not know the interpretation against the wording!), the European Court of Justice decided that a ‘fixed establishment’ within the meaning of Article 44 of the VAT Directive [12] in other Member State, for the purpose of determining the place of taxation of those services, would not matter and – for tax purposes – it is supposed to be the place, where the taxable person has established his business [13]. It referred its settled case law.

Subsequently, it gave up this interpretation [14], „in order to prevent circumstances arising which could compromise the proper functioning of the common system of VAT, the European Union legislature provided in Article 44 of Directive 2006/112 that, where the service was provided to an establishment which can be characterized as a fixed establishment of the taxable person, the place of supply of the services must be considered to be the place where that fixed establishment is located.“

Article 2 of the directive 2008/8/EC [15] amended the Directive 2006/112/EC is hereby amended and introduced a new definition of place of supply of services.

Article 45 of the directive 2006/112 [16] foresees now that the place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall

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be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.

It means that with the directive 2008/8/EC as regards the place of supply of services (keyword: fundamental freedom of services) the EU has changed the directive on VAT – taxes. The directive 2008/8/EC was based on Article 93 Treaty establishing the European Community (now it would be Article 113 TFEU), as a legal base, just as directive 2006/112/EC on the common system of value added tax.

According to Ex-Article 93 of this Treaty [17] (now: Article 113 TFEU) the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market within the time limit laid down in Article 14.

Article 113 (ex-Article 93), as a legal base foresees the following condition for its applicability: „such harmonization … [author: must be] ... necessary to ensure the establishment and the functioning of the internal market“. It means that the secondary law acts, such as the discussed directive 2008/8, may be based on Article 113, if the law, that directive establishes, would be „necessary to ensure the establishment and the functioning of the internal market“. Only under this condition the directive 2008/8 could be based on Article 113.

This seems to be a crucial question, if this condition, as laid down in the wording of Article 93, is fulfilled. Which secondary law is necessary for the functioning of the internal market and who defines the legal term „necessary“?

1. Formal conditions of applicability of the legal base of Article 113 TFEU – on the body competent to decide on conditions as laid down in the legal base for issuing secondary law acts

The question of a body having the competence to decide on which secondary law would be necessary for the functioning of the internal market is important due to the principle of conferral. According to Article 17 TUE [18] the Commission has legislative initiative, since Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise.

However, the Commission is not on its own. It has the power of proposal, what means the complete form of the power of initiative. Thus the Commission drafts legislation and submits any legislative proposals (for regulations or directives) subsequently to the Council and Parliament. Council and Parliament are legislatures. That is why, 3 institutions are acting during every legislative procedure of the European Union.

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Which one of the three institutions has the competency to decide on conditions of a legal base? Neither the TFEU nor TUE defines which EU institution would have the power and competency to decide, if the conditions of a legal base in the Treaty are fulfilled, so that the EU may issue legislation, secondary law acts. The arguments between the institutions of the European Union regarding the appropriate legal base did occur in the past [19, 20, 21].

Since EU institutions may act according to the principle of conferral and none of the TFEU or TUE provisions foresees the competency to decide on fulfillment of a given legal base, this legal matter has great importance.

This applies all the more, if the secondary law does not mention any condition of the legal base, as in the referred example: none of the recitals of the directive 2008/8 does refer the conditions of Article 113 (ex-Article 93) TFEU. That is why we will never discover, how could that possibly be an appropriate legal base for issuing secondary law legislation. The legal base that this directive was based on might have been not the proper provision.

2. Material conditions of applicability, as foreseen in the legal base of Article 113 (ex-Article 93) TFUE – when is law „necessary“?

Coming back to the case study: how can a new definition of „place of supply of services“ in matter of taxes [22], as laid down in Article 2 of directive 2008/8 be „necessary for the functioning of the internal market“?
Sadly, the recitals of the Directive do not speak about it at all. None of the recitals of this directive refers the wording of the legal base – Article 93 – as it should. This is due to the fact that secondary law act must fulfill requirements foreseen in primary law, constituting its legal base.

Thus, we will never, how a definition of „place of supply of services“ in matter of taxes could be „necessary for the functioning of the internal market“.

However, the recital 3 of this Directive 2008/8/EC explains that for all supplies of services the place of taxation should, in principle, be the place where the actual consumption takes place.
One could wonder, since when a consumption of a service could have anything to do with tax matters and how come, that a definition would be „necessary to ensure the establishment and the functioning of the internal market“?

At the point of view of the author, it is necessary – for the establishment and the functioning of the internal market – that an entrepreneur will pay taxes – wherever! Taxes paid in any Member State of the EU would secure the income to the country that provides its to the EU.

Unless … „the establishment and the functioning of the internal market“ means that only certain countries should earn, just as the „the establishment and the functioning of the internal market“ would depend only on one country (and not on others).

Based on an example, we can easily find a solution and understand, what does it mean in a certain case.

As an example can serve a person, entrepreneur from Poland, who has his company based in Poland, employees people there, drafts (for example) the fence there and builds it together. He only sells it and installs this fence it in Germany.

According to this regulations, this Polish entrepreneur, based in Poland, must pay taxes in Germany, since the consumption takes place in Germany.

It means that the fact, where the company is based, employs workers and the main activity takes place (draft and build of a fence) have secondary meaning (read: no meaning) due to the fact, that the consumption takes place in a different Member State.

And if we compare this legal regulations with the economic knowledge, that Polish typically provide services for German (cheap workforce), we understand, that the definition in the Directive 2008/8 serves the protection of German tax incomes, since Germany are the main consumers in the EU.

Thinking further, this is an elegant solution. Workers, employed the a Polish company, do not disturb the German system of social security and they only bring their workforce for the German consumers.

3. Why does the question of an EU institution responsible to determine the proper legal base of EU secondary law not matter

The working staff of the European Parliament and the Council is employed by the European Commission. Commission is the one who organizes competitions and employees the staff for secretaries and clerks, administrators and assistants.

In particular, for the Council, it means that representatives of Member States attend the meetings of Working Party on regular days, Monday – Friday, starting about 9 a.m. and finishing about 6 – 7 p.m. Representatives of Member States, attending the meetings in the Council have status of visitors, they do not have there offices, they come with their stuff and in the evening they go. The Council provides an office solely for the respective Presidency.

However, the secretaries of the Presidency and other workers in the Council are employees of the European Commission. This may wonder, since Council of the European Union represents the interests of Member States.

That is why – in order to keep the job – the Council secretariat workers will represent and support the interests of the European Commission, their employer.

III. Cabotage regulations of the European Union – or sabotage or Eastern European transport companies?

Article 1 of Council Regulation (EEC) No 3118/93 [23], adopted in October 1993, defines „cabotage". According to this provision, any road haulage carrier for hire or reward who is a holder of the Union authorization provided for in Regulation (EEC) No 881/92 [24] shall be entitled, under the conditions laid down in this Regulation, to operate on a temporary basis national road haulage services for hire and reward in another Member State, hereinafter referred to respectively as 'cabotage' and as the 'host Member State', without having a registered office or other establishment therein.

The cabotage thus offers non-resident carriers – owned by foreign companies – to operate in the „host state" for a few days. This opportunity is to stay for some more time in the Member State od destination, rather than return empty after an international trip to its state of origin. A truck can pick up and deliver a further load in the host country before returning to the border.
This regulation allowed carriers with an European Union authorization issued by a Member State to provide road haulage services within other Member States on the condition that they were provided on a temporary basis.

Recital 1 of the regulation from 1993 refer to the Treaty [25] and the establishment of a common transport policy, that would entail, inter alia, laying down the conditions under which non-resident carriers may operate transport services within a Member State. This provision should imply the removal of all restrictions against the person providing the services in question on the grounds of his nationality or the fact that he is established in a different Member State from the one in which the service is to be provided (Recital 2). Any removal of restrictions against nationals of other Member States is a truly noble goal.

However, once one realizes that the directive just introduced some restriction, one must wonder, if the regulation introducing restrictions for free movement of goods (transport!) can be based on the legal base that foresees removal of restrictions! For a reader this must look like a contradiction. Probably, due to the lack of a legal base in the Treaty, that would allow introduction of restrictions to road transport for nationals of other EU countries (prohibition of discrimination!), the Council has based this regulation on Treaty provisions that forbid restrictions. Anyway, the regulation that introduces restrictions to transport companies from other Member States does not follow the goals, as laid down in the legal base of Treaty provision foreseeing abolishment of restraints.

One must wonder, how could that happen and if representatives of Member States in the Council could read a text with understanding, since the clear contradiction is easily explained above and this was a Council regulation. Or maybe they do not read the text at all.

This regulations was replaced by a regulation on access to the internal road haulage market, as part of the 2009 road package. 2009 road package abandoned the concept of general cabotage and adopted the more restrictive formula of consecutive cabotage (allowing up to three cabotage operations within the seven days following an international journey to the cabotage host country). The 2020 regulation amending previous regulations on road transport (Regulation (EU) 2020/1055) [26] now provides the legal framework for rules applicable to cabotage.

Recital 2 of this regulation extended the applicability on further vehicles, „in order to avoid possible loopholes and to ensure a minimum level of professionalization of the sector using motor vehicles intended exclusively for the carriage of goods and with a permissible laden mass not exceeding 3,5 tonnes by way of common rules, and thus to approximate competitive conditions between all operators, that Regulation should be amended. The requirements for access to the profession should become mandatory for operators using motor vehicles or combinations of vehicles intended exclusively for the carriage of goods and with a permissible laden mass exceeding 2,5 tones but not exceeding 3,5 tonnes involved in international transport.“

That means that this EU regulation – in order to ensure a minimum level of professionalization – introduced further barriers, exceeding the application of cabotage on vehicles under 3,5 tonnes.
However, the applicable legal base does not cover issuing regulations in order to „ensure a minimum level of professionalization“. Thus, also this EU regulation – secondary EU law – does not fulfill criteria, as laid down in the legal base of the Treaty – primary EU law.

Why did the EU act in this regard, since it is supposed to abolish restrictions to free movement of goods?

In order to answer this very question one must see, who draws the considerable economic advantage of this regulation. These are transit countries. That may probably be one of the reasons why Germany moved its factories to Poland. In Poland German companies earn cheap workforce (while their bosses pay taxes in Germany due to the country of residence), enjoy tax discounts and the German state earns – for the third time – on the costs of cabotage. Because if a transport company from Poland fails to hold the capotage rules, it can pay fines, that German office for traffic control executes.
The cabotage rules have probably been established, since Member States have agreed on no customs, because customs could hinder the internal market. That means that cabotage constitutes a *pendant* to customs. It is just not executed on a regular base, but due to single cases, once a company violates the cabotage rules.

3. Results

The conducted research proves that the budgetary interests of Germany supersede the principles of the Treaty. These principles are hollowed out by secondary law regulations of the European Union, just as it is in German state, where illegal clauses on allocation of cases in courts hollow out the constitutional principles [27]. The automatic execution of judgments serves the widespread of illegality all over Europe. The author thus suggests to coin the term legal occupation, that reminds – for fact – the physical occupation, 1939 – 1945. Since 1945 Germany is thus using different methods, than 1939 – 1945. It prefers to abuse the laws.

However, both physical and legal occupation serve the same purposes: to distract capital and cheap workforce from other states, offering absolutely nothing instead.

The road, that Germany has build in Poland and in its own country thus serve also the German who commonly travel to Poland. And the roads serve also the traffic due to the fundamental freedom of goods – just as it is suitable with the German state policy.

Moreover, the current paper constitutes further evidence, that Germany first cares for money and distraction of capital (and workforce) from Eastern European countries. It fits with its policy of protecting its own budgetary sovereignty from any influence. Germany applies the eternity clause of its constitution arbitrary in areas regarding *ex ante* control of its budget and the Human Rights [28]. Thus, the Germany hegemony in Europe has both legal and economic aspects.

4. Discussion

At the point of view of the author, social rights of workers, due to invalidity or unemployment should correspond with the rights of workers, who live in the rich state, that they exercise after getting unemployed or invalid. There is no legal reason to discriminate and exclude the rights of cross-border workers in case of unemployment. Rich Member States, who take advantage of their workforce must take appropriate measures to secure social services in case of people, who provide their workforce in cross-border relation.

The social security is – next to the higher wage in a richer Member State – a reason why do workers go to work across the border. They pay – as part of their salary – for the unemployment insurance and should thus be able to use this earnings.

Social policies providing the same status for cross-border workers and those, who work and live in one and the same Member State (and thus do not exercise the fundamental freedom of workers) should constitute a pendant to the fundamental freedom of workers, as anchored in the Treaties. Only this way it will consider the interests of the cross-border workers. Without it, there is imbalance and the current legal situation constitutes unwritten discrimination or violation of the prohibition of discrimination.

EU must abolish the existing friction, since rich Member States take advantage of the cross-border workers for several reasons and poor countries loose.

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